IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.1.2006.

CORAM:

THE HONOURABLE MR.JUSTICE R.BALASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE M.THANIKACHALAM

APPEAL SUIT No.441 OF 1998
AND
CROSS-OBJECTION No.33 OF 2000.

1. Tmt.A.Vedanayagam
2. A.Michael
3. A.Lazar Mary
4. A.Jesudass
5. A.Joseph (Died)
6. A.Arokiasamy
7. A.John
8. A.James
9. A.Augustin
10. Thenmozhi Joseph
11. Arul Baskar
12. J.Rapeetha Earnest Mary
13. Minor J.Arokia Arona
14. Minor J.Stephen .. Appellants in A.S.No.441/1998 and respondents in Cross Objection No.33/2000.

(Appellants 10 to 14 brought on record as L.Rs. of the deceased 5th appellant, as per the order of the Court dated 22.4.1999 in C.M.P.Nos.6059 and 6060/1999)

(Minor appellants 13 and 14 are represented by their mother and natural guardian-the 10th appellant-Thenmozhi Joseph)

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Vs.

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1.Annakili
2.Mangalakshmi
3.K.Selvaraj
4.M.Rajamanickam
5.Tmt.Suseela
6.Tmt.Sarasu .. Respondents in A.S.No.441/1998 and cross-objectors in Cross-Objection No.33/2000.

A.S.No.441 of 1998 has been filed under Section 96 and Cross Objection No.33 of 2000 has been filed under Order 41 Rule 22 of the Code of Civil Procedure, both against the judgment and decree dated 13.4.1998 rendered in O.S.No.14770 of 1996 by the VII Additional Judge, City Civil Court, Chennai.

For appellants in A.S.No.441/1998 & respondents in the Cross-objection No.33/2000 : Mr.V.Raghavachari, for M/s.A.J.Abdul Razak and A.R.Shamsudeen

For R.1 & R.3 to R6 in A.S.No.441/1998 & cross-objectors in the Cross-Objection No.33/2000 : Mr.N.S.Sivam for Mr.R.Nadana Sabapathy

For R.2 in A.S.No.441/1998 : Mr.R.Suresh

JUDGMENT

M.THANIKACHALAM, J.

The plaintiffs, having failed in their attempt, to evict the respondents/defendants from the suit properties, have come to this Court, as appellants.

2. The defendants 1 and 3 to 7, aggrieved by some of the findings rendered by the trial Court, have preferred the cross-objection.

3. The parties are referred, in this appeal and cross-objection, as arrayed in O.S.No.14770 of 1996.

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4. The brief facts, regarding the plaintiffs case:

(a) The suit properties, originally belonged to the Corporation of Madras, from whom one Krishnadoss Lala and his brother had purchased the same, under a registered sale deed, dated 19.4.1944. In the partition, dated 5.5.1968, between Krishnadoss Lala and his brother, the suit properties were allotted to the share of Krishnadoss Lala. After his demise, the suit properties devolved upon his heirs. The heirs of Krishnadoss Lala and two others, by name Mohamed Idris and K.Peer Mohideen, entered into an agreement, under which it was agreed that the properties should be released from the notification of the year 1973, issued by the Tamil Nadu Slum Clearance Board. From the owners of the suit properties, as well as from the agreement holders, the plaintiffs have purchased the suit 'A' schedule property, for valuable consideration, on 30.9.1986. Thus, the plaintiffs are the absolute owners of the suit properties.

(b) The Corporation of Madras, had, erroneously, transferred the 'A' schedule property, to the Tamil Nadu Slum Clearance Board, on 17.12.1973 and thereafter, the same was treated as 'slum area'. Thereafter, at the instance of the plaintiffs' vendors, the Corporation of Madras, informed the Tamil Nadu Slum Clearance Board, that a resolution would be passed, cancelling the earlier notification, thereby confirming the sale in favour of Krishnadoss Lala. Pursuant to the action taken by the plaintiffs' vendors, for vacating the persons, who are residing in the slum, and towards the repayment of the amount, spent by the Slum Clearance Board, for carrying out improvement works in the area, a sum of Rs.1,12,950/= was remitted by the vendors of the plaintiffs' on 8.5.1986, in favour of the Slum Clearance Board. Thereafter, some persons, residing in the slum, have vacated the premises, after receiving the compensation also. The Government of Tamil Nadu, issued a Notification, cancelling the Kamaraj Colony Slum at New Boag Slum in Madras as a 'slum area' in and by G.O.Ms.No.831 Housing and Urban Development, dated 16.5.1991. Thus, the plaintiffs' vendors had transferable right over the property, which was transferred in favour of the plaintiffs, and the plaintiffs are the absolute owners of the suit properties, at present.

(c) The De-notification of the land, from 'slum area', had been issued at the instance of the plaintiffs, who had filed a Writ Petition in W.P.No.1283 of 1989, questioning the inaction of the Government, in not removing

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the slum dwellers from the suit premises, which was allowed by this Court on 10.1.1990, directing the Slum Clearance Board, to take steps to get the slum dwellers settled elsewhere and put the plaintiffs in possession of the land, free from any encumbrance. Aggrieved by the order in W.P.No.1283 of 1989, the defendants, along with some others, as third parties, have preferred an appeal in Writ Appeal No.272 of 1990 and a Division Bench of this Court, setting aside the order of possession, observed that 'the question of putting the plaintiffs in possession should be decided by separate, appropriate process, at the instance of the parties'. In view of the same, the plaintiffs are constrained to file the suit, for recovery of possession.

(d) The defendants do not have any right over the suit properties, at any point of time. They have put up only temporary structures on the four corners of the land and they are squatting on the property, preventing the plaintiffs, from effectively enjoying the same. The defendants are in possession, only at the instance of the Slum Clearance Board and they cannot have any independent title or interest. The refusal to vacate the suit properties is only illegal and their occupation wholly unauthorised. By the refusal, to vacate the properties, the defendants have caused loss to the plaintiffs, and therefore, they are liable to pay the damages also. Hence, the suit.

5. The defendants' case, in brief:

(a) The suit is not properly valued, for the purpose of Court fee and jurisdiction; if valued properly, the Court may not have pecuniary jurisdiction. The plaintiffs are not the owners of the suit properties, since the alleged vendors of the plaintiffs, themselves had no title over the suit properties. All the defendants have perfected title to the suit properties, by adverse possession, being in continuous, uninterrupted possession and enjoyment for more than sixty years. From the year 1973, there was a slum in the 'A' schedule property, where, about 50 families, including the defendants, were residing, even in the year 1979. Therefore, the notification issued by the Tamil Nadu Government in G.O.Ms.No.831, Housing and Urban Development, dated 16.5.1991, is not legally valid. Even before the allotment of the portions to the defendants, they are in possession and enjoyment of the property, for the past sixty years. Therefore, it is incorrect to state that the defendants came to be in possession, only at the instance of the Slum Clearance Board. Since the defendants have perfected title to the

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suit properties, the plaintiffs are not entitled to recover the same, the further fact being, the suit is barred by limitation.

(b) In the additional written statement, as well as in the written statement filed by the 5th defendant also, the same plea was repeated.

6. Originally, the suit was filed before this Court, as C.S.No.1485 of 1995. After the re-alignment of the pecuniary jurisdiction, the suit was transferred from this Court, to the City Civil Court, Madras, where the same was taken on file as O.S.No.14770 of 1996.

7. On the basis of the pleadings, the learned trial Judge, framing number of issues, has taken-up the case, for trial. In order to make out a case, as pleaded in the plaint, A.Arokiasamy (the 7th plaintiff) has been examined as P.W.1, seeking aid from 15 documents, marked as Exs.A.1 to A.15. On behalf of the defendants, five witnesses have been examined as D.Ws.1 to 5, seeking strength from Exs.B.1 to B.38.

8. The learned trial Judge - the VII Additional Judge, City Civil Court, Chennai - while evaluating the above materials, has come to the conclusion, that the City Civil Court has jurisdiction to try the suit; that though the plaintiffs had title to the suit properties, the same is extinguished by adverse possession, in this view, the suit is barred by limitation; that though the properties are properly described, in view of the proved fact that the defendants have perfected title to the suit properties, by adverse possession, the plaintiffs are not entitled to recover the same. Thus concluding, the suit was dismissed, without costs, as per the judgment dated 13.4.1998, which is under challenge in this appeal.

9. Heard Mr.V.Raghavachari, the learned counsel appearing for the appellants in the appeal and the respondents in the cross-objection; Mr.N.S.Sivam appearing for the respondents 1 and 3 to 6 in the appeal and the cross-objectors and Mr.R.Suresh for the second respondent in the appeal.

10. Mr.V.Raghavachari, the learned counsel appearing for the appellants, would contend:

i) that when the plaintiffs have established their unquestionable title to the suit properties, the suit ought to have been decreed, as prayed for;

ii) that the defendants have failed to prove the

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alleged adverse possession and in this view, the owners of the suit properties are entitled to recover possession, automatically;

iii) that the conclusion of the trial Court, the suit is barred by limitation, is erroneous, since the effect of Article 65 of the Limitation Act is not properly considered; and

iv) that the defendants, being the trespassers, are not entitled to squat upon the properties, without any legal basis.

Elaborating the above points, taking us through the pleadings as well as the previous proceedings between the parties, in addition to taking us through the oral and documentary evidence also, the learned counsel for the appellants would urge that the error or the mistake committed by the trial Court, in not considering the case from proper perspective, should be rectified by the interference of this Court thereby setting aside the judgment of the trial Court, a decree should be granted, as prayed for.

11. In response to the above submissions, the learned counsel appearing for the defendants would submit that for the past sixty years or so, the defendants are in continuous possession and enjoyment of the suit properties, adverse to the real owner, thereby prescribed title, which was properly considered and appreciated by the trial Court, not warranting any interference; that the findings of the trial Court, that the suit is barred by limitation, is also unassailable; that some of the findings rendered against the defendants, on issue No.2, by the trial Court, are erroneous and that the suit filed, without the permission under Section 29 of the Tamil Nadu Slum Areas (Improvement and clearance) Act, 1972 is barred and therefore, confirming the dismissal of the suit, the findings rendered against the defendants, should be set aside. The further submission is that the properties are not valued properly for the purpose of court fee and jurisdiction.

12. Having regard to the facts and circumstances of the case and the arguments advanced before us, the points that arise for consideration in this appeal and cross-objection are:

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1. Whether the defendants have perfected title to the suit properties, by adverse possession?

2. Whether the suit is barred by limitation? and

3. Whether the plaintiffs/appellants are not entitled to recovery of possession of the suit properties?

POINTS:-

13. In order to appreciate the facts in issue and to clear the controversy, we have to remember the history, before the filing of the suit, and how the parties have traced out their title or possession, as the case may be.

14. In the plaint, there are five schedules of properties. 'A' schedule property includes, 'B' to 'E' schedules. Though a faint attempt was made, to say that the properties are not properly described, it was not taken to the end, because of its identification, as indicated in the plan, attached to the plaint. According to the plaintiffs, 'B' schedule is in the occupation of the first defendant, 'C' schedule is in the occupation of the second defendant, 'D' schedule is in the occupation of the third defendant and 'E' schedule is in the occupation of the fourth defendant. After the death of the second defendant, now his Legal Representatives viz. Defendants 5 to 7 are agitating the case, claiming inheritance.

15. It is the specific case of the plaintiffs, as seen from paragraph No.2 of the plaint, that the suit properties originally belonged to the Corporation of Madras, which had transferred the same in favour of Krishnadoss Lala and his brother, under a registered sale deed dated 19.4.1944 i.e. Ex.A.11. Thereupon, in the partition, the suit properties were allotted to the share of Krishnadoss Lala, under the partition deed dated 5.5.1968. Though the sale deed was assailed in the written statements, at present, the same is not challenged, because of the previous litigation and findings therein. Thus, it could be safely concluded, that Krishnadoss Lala and his brother had purchased the suit properties, from its original owner viz. the Corporation of Madras, under a registered sale deed dated 19.4.1944, which later devolved upon Krishnadoss Lala, under the partition deed dated 5.5.1968.

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16. The Corporation of Madras, having sold the suit properties in favour of Krishnadoss Lala, on 19.4.1944, either under mistaken impression or otherwise, appears to have, erroneously, transferred the 'A' schedule property to the Tamil Nadu Slum Clearance Board, on 17.12.1973 and pursuant to the same, this area was treated as 'slum area'. After the transfer of the suit 'A' schedule property to the Tamil Nadu Slum Clearance Board, to improve the slum, amounts were sanctioned and it appears, the Collector of Madras has also recommended, to grant housing pattas to several persons, in addition to, providing funds for construction of houses also, further providing basic amenities in the slum area. When the matter came to the knowledge of R.K.Mannulal, son of Krishnadoss Lala, he submitted a representation, to the Corporation of Madras, complaining that his private land had been erroneously handed over to the Tamil Nadu Slum Clearance Board and therefore, the land should be returned to him, assuring he would reimburse all developments charges, spent by the Board, for the improvement of the slum area. The Commissioner of Corporation also, informed the Tamil Nadu Slum Clearance Board, that by mistake, the private land of Krishnadoss Lala had been handed over to the Board in 1973, and requested the Board, to exclude the suit properties from the list of properties owned by the Slum Clearance Board, further assuring, appropriate resolution would be passed and furnished to the Board, in this regard. Agreeing to the conditions imposed, as evidenced by Ex.A.4, R.K.Mannulal paid the development charges, spent by the Slum Clearance Board, in the slum area. Thereafter, the Slum Clearance Board requested the Government of Tamil Nadu, to de-notify the 'slum area', but, there was no speedy action.

17. In view of the slackness, shown by the Departments, the plaintiffs have filed W.P.No.1283 of 1989, before this Court, against (1) the State of Tamil Nadu; (2) the Slum Clearance Board and (3) the Corporation of Madras, seeking a direction to the respondents, to de-notify and put the plaintiffs, in possession of their property i.e. 'A' schedule, described in the plaint. By the order dated 10.1.1990, the said Writ Petition was allowed, issuing a Writ of Mandamus, directing the respondents therein, not only to de-notify the property, but also to hand over vacant possession of the land, to the petitioners therein. Admittedly, the persons, who were actually residing in the property, were not impleaded as parties to the said Writ Petition. Therefore, some of the defendants herein and others, as aggrieved third parties, with the permission of the Court, have preferred an appeal against the above said

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Order, in Writ Appeal No.272 of 1990.

18. A Division Bench of this Court, by the judgment dated 21.3.1990, has come to the conclusion that the declaration granted by the learned single Judge, declaring that the properties ceased to be a 'slum area' and also the direction to the respondents to hand over vacant possession of the property to the petitioners therein, are not legally sound and in this view, the Writ Appeal was allowed, sustaining the prayer regarding 'de-notifying' alone. It is also observed:

> "The other controversies with reference to the recovery of possession from the third parties and the declaration with reference to the property ceasing to be a slum area are left open.' This judgment reached finality. In the judgment itself it is stated, as contended by the learned counsel for the appellants, the title to the property to Krishnadoss Lala is confirmed, since it is observed that 'the action taken by the second respondent (Slum Clearance Board) on the basis of the transfer by the third respondent (Corporation of Madras) to the former is totally without jurisdiction and must stand eschewed".

It is also observed in paragraph No.6 of the said judgment:

> "Their grievance is only with reference to disturbance of their occupation. They have not disputed and obviously they cannot dispute the fact that there could not be a valid transfer of the property by the third respondent to the second respondent, when, in fact, even as early as 1944, the third respondent has parted with the title to the property to and in favour of Krishnadas Lal, the predecessor-in-title of the petitioners."
> (Emphasis supplied by us)

Thus, the title of Corporation of Madras and transfer of the same to Krishnadoss Lala are all admitted and even we could say, it is declared. Therefore, it should be held that the suit properties were purchased by Krishnadoss Lala and his brother from the Corporation of Madras and subsequently in the partition, it was allotted to Krishnadoss Lala, which the plaintiffs are entitled to inherit, as his successors-in-interest. Therefore, it is not open to the defendants here to contend that the plaintiffs are not the owners of the suit properties.

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19. It is an admitted fact that elsewhere in the year 1980 or 1981, the slum dwellers have applied for the allotment of plots, probably agreeing to pay the sale price for the site, on installment basis. Pursuant to the applications, given by the slum dwellers, including the defendants, the Tamil Nadu Slum Clearance Board, in its proceedings dated 5.3.1981, allotted plots to them, fixing the sale price as well as the installment also. In the proceedings, the Tamil Nadu Slum Clearance Board have informed the allottees that at the time of the application, a particular amount has to be paid and the balance has to be paid, on installment basis, including interest, within ten years or so. The order further reads that after the lapse of ten years, that too on payment of the entire sale consideration, a sale deed would be executed in their favour, conferring title upon them. The above general allotment order, as well as specific portions, allotted to the defendants, were accepted by them without any demur, which would indicate that they have not claimed exclusive title or ownership over the suit properties, either as true owner or as a person, who had acquired title by adverse possession by long, uninterrupted enjoyment. It appears, after the allotment, the Tamil Nadu Slum Clearance Board failed or refused to receive the installments as per the allotment order, which caused grievance to the defendants, as well as the other slum dwellers.

20. Because of the reason the Tamil Nadu Slum Clearance Board had refused to receive the amount, thereby attempting to deprive their right, some of the defendants and other allotees have filed W.P.No.7785 of 1987, to issue a Writ of Mandamus, directing the Tamil Nadu Slum Clearance Board, to collect the installments towards the sale consideration, as per the allotment order dated 5.3.1981. A Division Bench of this Court, considering the disposal of Writ Appeal No.272 of 1990, dismissed the Writ Petition as infructuous, by the order dated 21.3.1990. Because of the steps taken by the plaintiffs, de-notification was issued, exonerating the suit properties from 'the slum area', which was challenged by the defendants in W.P.No.4725 of 1997 and the same was dismissed on 4.4.1997. The said dismissal order came to be challenged before the Division Bench of this Court, in Writ Appeal No.475 of 1997. A Division Bench of this Court, while disposing the appeal had observed that 'the Government has issued the denotification, pursuant to the decision in Writ Appeal No.272 of 1990, which became final and the same cannot be challenged, that too, when the suit is pending for possession'. In view of this finding, it is no longer open to the defendants to argue, denotification is not proper

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etc., and if at all, on other grounds alone, suit for possession could be resisted. Thus, as per the de-notification, the suit properties ceased to be a 'slum area'. Because of the above litigations between the parties, it is to be held, that the suit properties are no longer a 'slum area', which were the private properties of Krishnadoss Lala and after his demise, the same belonged to his legal heirs. In view of the admitted legal proceedings between the parties, wherein the title of Krishnadoss Lala was also accepted, it is not open to the defendants to contend, at present, that the plaintiffs, who purchased the property from the heirs of Krishnadoss Lala, are not the owners of the suit properties.

21. Under the sale deed dated 30.9.1986, from the legal heirs of Krishnadoss Lala, the plaintiffs have purchased the properties, wherein it is stated that the properties are under the illegal occupation of hut dwellers, who put up numerous huts and squatted in portion of the properties, without paying any rent to the vendors. It is also further stated, 'it became very heavy against the vendors 1 to 6, to establish their factual and legal ownership and it looked a very difficult, if not an impossible task, to redeem and restore the said property as a vacant land site, which could be done at a very cost of time, effort and money and the lack of incentive on the part of vendors 1 to 6, the said landsite was considered as good as lost forever'. These averments would indicate that the owners had knowledge about the illegal occupation of the suit properties by others, including the defendants. On the basis of the above averments, an attempt was made on behalf of the defendants, to show, as if the vendors of the plaintiffs had lost their title, which cannot be, it is not so also, since the vendors have reiterated their title, such as how they have purchased the property, how they are entitled to succeed, etc. Because of the inability on their part, to recover the properties, such as, from the trespassers, as that of the defendants and instead of having the long drawn legal battle before the Courts, they have conveyed the properties, to the plaintiffs, which will not, prima facie, extinguish the title of the plaintiffs' predecessors-in-interest. Instead of fighting with the trespassers, they thought of conveying the properties, certainly, not recognising the right of trespassers, if any. Therefore, considering the fact that the title of Krishnadoss Lala was admitted and that his Legal Representatives are having the right to convey the properties, and in this view, the plaintiffs, having purchased the suit properties, under Ex.A.1, they are entitled to maintain the suit, for recovery of possession,

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even without declaration of title. It is not mandatory,the original owner of the property should file a suit, for declaration, with consequential relief of possession, if the trespassers denied the title. In a suit for possession also, which is based on title, it could be decided, since there is no bar. In this case, considering the previous litigation between the parties, where the title also considered, as indicated supra, without prayer for declaration, for possession, a suit is well maintainable. In this view, if the plaintiffs should be non-suited, it is for the occupiers of the properties, to establish their possession, as hostile one, vesting right in their favour, by extinguishing the title of the original owner, by efflux of time.

22. In the written submission filed on behalf of the defendants, it is contended that the reliefs prayed should have satisfied Sections 5 and 6 of the Specific Relief Act, 1963 and Articles 64 and 65 of the Limitation Act and in the absence of the same, it is to be held, the suit for delivery of possession is barred by limitation. As rightly replied by the learned counsel for the plaintiffs, the written submission, so filed on behalf of the defendants, is not only untenable, but also it has no legal base, considering the scope of the suit. Section 6 of the Specific Relief Act, 1963 provides summary relief of recovering possession of property, when the suit is based upon previous possession alone, complaining dispossession. In that case alone, if a person is dispossessed, without his consent of immovable property, he may file a suit, to recover possession, notwithstanding any other title, that may be set up in the suit. In that case alone, Section 6 (2) contemplates, that the suit shall be brought within six months from the date of dispossession. In Section 5 of the Specific Relief Act, which contemplates, specific relief of immovable property, no such period is prescribed, whereas it describes 'recovery of specific immovable property', in the manner provided by the Code of Civil Procedure. The entire reading of the plaint would go to show, that the suit is based on title, not on the basis of previous possession, then, complaining dispossession, warranting to take steps for repossession within six months. In this context, we have to see the relevant provisions under the Limitation Act.

23. Article 64 of the Limitation Act contemplates the period of limitation, as 12 years, from the date of dispossession, when the suit is filed for possession of immovable property, based on previous possession and not on title, when the plaintiff, while in possession of the

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property, has been dispossessed. This is apart from the relief available under Section 6 of the Specific Relief Act, where the Court is not expected to see the title of the parties, whereas the main criteria would be dispossession alone, notwithstanding any other defence. On the other hand, if the suit comes under Art.64 of the Limitation Act, defence also should be seen, decided and the burden is upon the plaintiff also to prove his previous possession, and his dispossession, within 12 years. In the plaint, it is not the case of the plaintiffs, that while they were in the possession of the property, they were dispossessed by the defendants, thereby bringing the suit within the scope of Article 64 of the Limitation Act. In this view, even assuming, that the defendants were in possession of the properties, for the past more than 12 years or so, plaintiffs cannot be non-suited, on the ground that the suit was not brought within 12 years from the date of dispossession, as if concluding that the defendants are in possession of the property, for the past 60 years or so, as claimed by them.

24. Article 65 of the Limitation Act prescribes period of limitation as 12 years, when the suit is based on title. It reads:

Description of suits	Period of Limitation	Time from which period begins to run
For possession for immovable property or any interest therein based on title	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.

Thus, it is seen, it is not necessary for the plaintiffs, to show that the suit is filed within 12 years, when the possession of the defendants became adverse to the plaintiffs. It is a settled proposition, that the owner of the property is entitled to recover possession of the same, from the trespassers or encroachers, as the case may be, provided, the trespassers have not acquired any interest in the property, legally traceable. Law recognises adverse possession, which shall have the origin of trespass. Therefore, if a person had occupied the property of others, without their consent, it is for him, to make out a case, that his possession was adverse to the title holder and the possession continued, for more than 12 years, uninterruptedly and he enjoyed the property also with an animus to enjoy the same, as his own, adverse to the real owner of the property.

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25. Now the law is well settled, that the person, who claims adverse possession, alone has to establish the same and on his failure, whatever may be the period of his occupation, the owner of the property is entitled to recover the property, which cannot be prevented. Therefore, the submission of the learned counsel for the defendants, that since the suit is not filed within 12 years, or within six months from the date of dispossession, the claim of the plaintiffs should be negatived, is legally unsound, deserves rejection, which could be seen from the observation of the Honourable Supreme Court in VASANTIBEN PRAHLADJI NAYAK AND OTHERS vs. SOMNATH MULJIBHAI NAYAK AND OTHERS [(2004) 3 SCC 376], wherein the view of the Bombay High Court was affirmed, which reads:

> "In the case of Hanamgowda Shidgowda Patil v. Irgowda Shivgowda Patil [AIR 1925 BOMBAY 9 : 26 BOMBAY L.R. 829], it has been held that in cases of adverse possession, the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff, but it commences from the date when the defendants' possession became adverse. Therefore, in the present case, the starting point of limitation for adverse possession cannot be taken as 29.11.1965 and one has to take the date when the respondents' possession became adverse."

In this view, the failure on the part of the plaintiffs or their predecessors-in-interest, in not taking steps to recover possession, on the basis of title, from the dates of their acquiring title to the suit properties, certainly, would not bar them from initiating the suit, for recovery of possession, at a later point of time. If it is to be held, that the suit is barred by limitation, then, it is for the contesting defendants, to make out a case of adverse possession, proving from which date their possession was adverse, on the basis of plea and evidence.

26. The learned counsel for the defendants would contend that from the year 1944 onwards, or even prior to that, the defendants or some of the defendants or their predecessors-in-interest have been in possession of the suit properties, in their own right and that possession being open, notorious, known to one and all, adverse, should be construed as 'adverse possession'. In the sale deed (Ex.A.1) itself, it is specifically stated, that the properties are under the occupation of the encroachers or the trespassers, as the case may be, and those persons

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should include the contesting defendants also, there cannot be any doubt because of their admitted possession. At present also, admittedly, the defendants are in possession of specific portions, as described in schedules 'B' to 'E'. Therefore, we have to see, even assuming that the defendants are in possession of the property, exceeding 12 years, on the date of filing of the suit, whether that would amount to 'adverse possession', extinguishing the title of original owners, conferring title in them.

27. In KONDA LAKSHMANA BAPUJI vs. GOVERNMENT OF A.P. AND OTHERS [(2002) 3 SCC 258], the Honourable Apex Court, considering the question of adverse possession, has held:

> "It is a well-settled proposition that mere possession of the land, however long it may be, would not ripen into possessory title, unless the possessor has animus possidendi to hold the land adverse to the title of the true owner. It is true that assertion of title to the land in dispute by the possessor would, in an appropriate case, be sufficient indication of the animus possidendi to hold adverse to the title of the true owner. But, such an assertion of title must be clear and unequivocal though it need not be addressed to the real owner. For reckoning the statutory period to perfect title by prescription both the possession as well as the animus possidendi must be shown to exist. Where, however, at the commencement of the possession there is no animus possidendi, the period for the purpose of reckoning adverse possession will commence from the date when both the actual possession and assertion of title by the possessor are shown to exist."

From the above observation, it is seen, even it may not be necessary in all the cases, that the possession, adverse to the real owner, must be known to him, if it is otherwise open, notorious. Only in certain category of cases, we feel, it would be necessary that the adverse possession must be with the knowledge of the true owner and it may not be necessary in all the cases. When the co-owners claim title to the property, by adverse possession, then, the other co-owner must be put to notice, about the adverse possession, claimed by the other co-owner, because law presumes possession of one co-owner is that of the possession of other co-owners also. Therefore, if one of the co-owners, wants to oust the other co-owners, thereby projecting the adverse possession, then, it should be held,

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the other co-owners should have the knowledge of adverse possession. If this knowledge is absent, then, the person who is in actual possession of the property, cannot claim adverse possession. In this view alone, it is to be held, the possession, adverse to the real owner, must be known to him, not in all other cases, where trespasser or encroacher claims possession in himself, being in possession openly, continuously, uninterruptedly, known to all. It is also observed in paragraph No.56 of the judgment that 'if the possession of the land in dispute has the character of permissive possession, one cannot acquire title by adverse possession'. In the case involved in the above decision, though possession was established for quite a long period, the requirement of animus possidendi was not adverted to, as on facts, it was shown to be present. It is further seen from Paragraph No.63 of the judgment, that if the person, who was in possession of the property claimed as a lessee under the inamdar, his possession should be considered as permissive possession and in that case, it is not possible to assert title to the land on the ground of adverse possession. On facts, in that case, only on the date of filing of the written statement, the appellant therein claimed title to the land in dispute. Therefore, it was held:

> "It is only in the written statement filed in the present suit that he pleaded adverse possession for the first time. The possession of the said land from the date of Ext.B.39, 1954, till the date of the filing of the written statement in 1987 cannot, therefore, be treated as adverse because there was no animus possidendi during the said period. Before the date of filing the written statement he never claimed title to the land in dispute adverse to the State. On the other hand, he paid Siwaijamabandi and applied for occupation of rights."

In view of the above settled position of law by the Apex Court, at present, if it is shown that the possession of the defendants in the case on hand, is traceable to permissive possession, or shown to be that they were in possession of the property, without any animus, but enjoying the same, not adverse to the real owner, as that of their property, then, whatever may be the length of period of possession, that will not vest a right, which could be recognised under law.

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28. In DEVA (DEAD) THROUGH LRs. vs. SAJJAN KUMAR (DEAD) BY LRs. [(2003) 7 SCC 481], the Supreme court, had, an occasion, once again, to consider adverse possession, preceded by animus possidendi, wherein it is held:

> "Mere long possession of the defendant for a period of more than twelve years without intention to possess the suit land adversely to the title of the plaintiff and to the latter's knowledge cannot result in acquisition of title by prescription."

This observation is also made, considering Article 64 of the Limitation Act, as well as Section 6 of the Specific Relief Act. In the case involved in the above decision, a suit was laid for delivery of possession, to the extent of 70' x 20' in S.No.452. The defence therein was the land measuring 70' x 20' of S.No.453 was in the possession of the defendant since last 10-12 years, had raised a compound wall and encroached the suit land also. From the defence it is shown, the defenant had admitted that he came to know about the encroachment only after filing of the suit, since he claimed the encroached portion also, as if forming part of S.No.453, whereas that extent is part of S.No.452 belonging to the plaintiff. Considering the above facts, the Apex Court has held:

> "The animus to hold the land, adversely to the title of the true owner, can be said to have started only when the defendant derived knowledge that his possession over the suit land had been alleged to be an act of encroachment - on the plaintiff's survey number."

It is further observed:

> "Mere long possession of the defendant for a period of more than 12 years without intention to possess the suit land adversely to the title of the plaintiff and to the latter's knowledge cannot result in acquisition of title by the defendant to the encroached suit land."

Thus, in this decision, the animus to possess the property, adversely to the real owner, was emphasised and in the absence of the same, it is held, long possession, whatever may be its length, would not confer title to the disputed portion or the encroached portion and this dictum is squarely applicable to the case in hand, for which we will give our reasonings infra, while discussing the evidence.

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29. In SAROOP SINGH vs. BANTO AND OTHERS [(2005) 8 SCC 330], the Apex Court, once again, reiterated the legal position that in a suit for possession, based on title, the plaintiff, already having proved the title, in an earlier suit, the onus to prove the acquisition, by adverse possession, lies on the defendant. The Honourable Apex Court, elaborately analysing Articles 64 and 65 of the Limitation Act and considering the changes made in the old Limitation Act as well as new Limitation Act, held:

> "In terms of Article 65, the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff, but commences from the date the defendant's possession becomes adverse. (See Vasantiben Prahladji Nayak V. Somnath Muljibhai Nayak [(2004) 3 SCC 376]"

In the same decision, the view taken previously in KARNATAKA BOARD OF WAKF v. GOVERNMENT OF INDIA [(2004) 10 SCC 779], was also affirmed, reading para No.11 of the said judgment, which says:

> "Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession."

From the above cases, one thing is certain, that the law requires 'animus' to extinguish the title of the true owner, then to confer title upon the squatter, by adverse possession, whatever may be the length of possession. In view of the recent decisions of the Apex Court, as well as the settled position, regarding the law on adverse possession, we feel it may not be necessary for us to quote

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all the judgments, relied on by either side, unnecessarily loading this judgment and the above rulings would suffice, to settle the dispute between the parties, based on facts.

30. In view of the above stated position, we have to see, from which date(s), the defendants have claimed title over the suit properties, either adversely or otherwise, asserting title in themselves, thereby showing animus to enjoy the properties, as their own, whether it is against plaintiffs or somebody. Admittedly, the owners of the properties have filed a suit in C.S.No.83 of 1991, seeking injunction, restraining the Tamil Nadu Electricity Board from providing Service Connections to some of the defendants herein in respect of the properties which are in their occupation, in which they have filed O.A.No.68 of 1991 also, seeking interim relief. If really, the defendants had animus to enjoy the property, adverse to the real owners, though the said suit is one for bare injunction, not to provide service connections, they should have stated, in their counter or written statement, as the case may be, that they have prescribed title by adverse possession and this being the position, the alleged owners cannot prevent the defendants, from getting Service Connections from Tamil Nadu Electricity Board. To show this, neither the counter nor the written statement, filed (if any) by the defendants in C.S.No.83 of 1991, is filed before the Court. The order passed by this Court, dated 22.3.1991 in O.A.No.68 of 1991, and the appeal preferred in O.S.A.No.95 of 1991, against the said order, also does not indicate what was the stand taken by the defendants, regarding the title to the properties, in the previous suit. Thus, we could safely conclude, when there was an opportunity for the defendants, to project the theory of adverse possession, asserting title in themselves, they failed to do so, probably correctly also, since, they have not claimed adverse possession, at any point of time, whereas they have claimed only right to be in possession of the property, on the basis of the allotment order, issued by the Tamil Nadu Slum Clearance Board.

31. Pursuant to the applications given by the slum dwellers, who were occupying the suit properties, the Tamil Nadu Slum Clearance Board, has passed an order dated 5.3.1981, allotting specified areas, including the defendants, as indicated above, not in dispute. If the defendants had been in possession and enjoyment of the suit properties, on their own, without reference to anybody, with an animus to enjoy the same, as absolute owners, there would not have been any necessity for them, to apply for allotment. The very fact, in 1981, all the defendants have

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applied for allotment of plots, would suggest, clinchingly, that they had no animus to enjoy the suit properties or any portion of the same, as their own, adverse to the real owner, whoever may be. After the allotment order, when there was dispute, about the notification as well as on the complaint by the original owners, for de-notification, the Tamil Nadu Slum Clearance Board, refused to receive the installments, as per the allotment order. Therefore, admittedly, the slum dwellers, including the defendants, have filed Writ Petition No.7785 of 1987, before this Court, as said above, to issue a direction to the Slum Clearance Board, to receive the installments. Therein also, they have not claimed title over the suit properties, on the basis of adverse possession. If really, had they prescribed title to the suit properties, being in possession from the year 1944 or so, in 1981, they should have, automatically, prescribed title by adverse possession and in that case, there would not have been any necessity for them to apply for allotment, as well as to complain, that the Tamil Nadu Slum Clearance Board, which had allotted the plots, failed to receive the installments, and therefore, they should be directed to receive it.

32. All of them were fully aware of the fact, that their possession is not traceable as encroacher (though they were so as claimed), but the same is traceable to the allotment orders. They were fully aware of their right and obligation, that unless they pay the installments, they could not claim title to the suit properties, and failure to pay installments also would affect their right, disentitling them to claim right over the property. In this view alone, they had filed W.P. for directions, to Tamil Nadu Slum Clearance Board, which was negatived. The above conduct of the defendants would suggest, clinchingly, that till 1981, as well when the Writ Petition in W.P.No.7785 of 1987 was filed in the year 1987, they had no intention to enjoy the properties, adversely to anybody and in fact, they were enjoying the properties only on the basis of the permission or allotment given by the Tamil Nadu Slum Clearance Board. All the documents filed on behalf of the contesting defendants, such as voters list, identity card, letters received by them, would indicate, if at all, they were residing in the suit schedule properties, fixing the time also, as per the dates available in those documents. As rightly submitted by the learned counsel for the plaintiffs', those documents would not prove, positively, their assertion of title to the suit properties against the true owner. The litigation started between the parties from the year 1990 and even before that, the true

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owner had taken steps for denotifying this area, since it was originaly declared as 'slum area'. Thus, the defendants had sufficient opportunities, then and there, to agitate their right over the suit properties, if they had acquired title under the process known to law, declaring so also in writing. As disclosed by the materials, it seems, at no point of time, before the filing of the written statement in this case, the defendants have claimed title to the suit properties, by adverse possession, thereby showing they were always recognising others as the owner of the properties, whether it is the Tamil Nadu Slum Clearance Board or somebody. In fact, in W.P.No.7785 of 1987, which was filed on behalf of the slum dwellers, one Raju, has filed an affidavit, wherein it is stated:

> "The petitioners have a right to continue in the property in as much they have been allotted the lands under the World Bank Scheme read with G.O.Ms.No.1117, dt.27.6.69 and G.O.Ms.No.1100, dt.29.8.80. Having allotted the lands and having provided loan facility for putting up superstructure, the 1st and 2nd respondents are estopped from refusing to receive the monthly payments from the petitioners."

Thus alleging, a direction was sought for against the second respondent therein i.e. the Tamil Nadu Slum Clearance Board, to collect the installments, towards sale consideration. In the light of the above discussion, since there was no animus possidendi, to enjoy the properties, adversely, as ruled by the Apex Court, whatever may be the period, the length of possession, no question of prescribing title to the suit properties, by adverse possession, would arise.

33. The learned counsel for the defendants would contend, the claim of loss of animus possidendi would become applicable, if the defendants had sought for any relief against the Government of Tamil Nadu or Tamil Nadu Slum Clearance Board and not against the plaintiffs/appellants and their predecessors-in-title. It is the further submission of the defendants that the plaintiffs are not entitled to oust the defendants, from claiming adverse possession, placing reliance upon the allotment of plots, by the Tamil Nadu Slum Clearance Board, since the notification, as 'slum area' in the Tamil Nadu Gazette, on 2.2.1972 was denotified by G.O.Ms.No.831, dated 16.5.1991 and in this view, it is further submitted that the allotment could not be taken into consideration, as if it is permissive possession. Giving our anxious thought

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and applying the legal position, available in this regard, we are unable to persuade ourselves, to accept the above submission. To ascertain and affirm title, by way of adverse possession, as repeatedly held, the 'animus' is most essential on the part of the defendants, whether it is against the true owner or against somebody, who claimed that they were having the power to allot the plots, in this case namely The Tamil Nadu Slum Clearance Board. The intention of the defendants alone will play key-role, in deciding the adverse possession.

34. The Tamil Nadu Slum Clearance Board had allotted the plots, at the request of the defendants and by their request, they have not only conceded the title of somebody but also have not asserted title in themselves. If it was the case of the defendants that they are the owners of the properties, they should not have applied for allotment, recognising somebody as the owner and they should not have accepted payments by the installment. On the other hand, recognising the Tamil Nadu Slum Clearance Board as the owner, which disowned its ownership, because of the subsequent denotification, allotments were sought for, accepted. Since the Tamil Nadu Slum Clearance Board itself has now accepted that their acts are not in accordance with law and the true owner of the properties are the plaintiffs, then, the possession of the suit properties by the defendants, will not act adverse to the real owner also. In this case, admittedly, till the filing of the written statement, as disclosed, prior to that, nowhere, the defendants have asserted their title to the suit properties, by adverse possession. For these reasons, we are of the considered opinion, the defendants are not entitled to take into account the period, when they have conceded the right of others whether for allotment or otherwise. The submission of the learned counsel for the defendants, since the suit properties ceased to be a 'slum area', their possession against the true owner viz. The plaintiffs should be considered, as adverse, is not acceptable to us, since there was no animus on the part of the defendant, at any point of time, to enjoy the properties exclusively, against the interest of the real owner. For the foregoing reasons, we are unable to agree with the submission of the learned counsel for the defendants, that the period of possession of the suit property, claimed by the defendants, being adverse one, continued without any interruption against the predecessors-in-title of the suit properties viz. Krishnadoss Lala and his legal heirs.

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35. A person who is enjoying the property, ordinarily, would have only one intention as far as his possession is concerned i.e. he is enjoying the property, as true owner or enjoying the property recognising the title of others, under some arrangement, under the hope that he can be the true owner if he complies with the conditions imposed by the true owner. Therefore, there cannot be two intentions, one against the true owner and one against the person who claims as true owner, in this case, the Slum Clearance Board. As indicated above, the possession of the defendants, when the area was notified as slum area, was always permissive in nature, which cannot have the character of extinguishing the title of the true owner. Only after the denotification and when the defendants had asserted title in themselves, the adverse possession, if at all would have commenced. In this case, that point is also not made certain. The suit was filed within 12 years from the date of denotification. Before that, it is not shown, that the true owners title had extinguished. In this view also, the previous possession i.e. before notification, which is not adverse, certainly, cannot be taken into account, to calculate the period of adverse possession, against the true owner.

36. In this context, necessarily, we have to secure the oral evidence of the parties. Unless it is pleaded, from which date the person, who claims adverse possession, was in possession of the property, adverse to the real owner, it may not be possible to confer title upon him, on the basis of adverse possession and in this view, the definite date from which the defendants are in possession adverse to the true owner is material. Our effort, by going through the written statements, ended in vain, to fix the date. The oral evidence of D.Ws. also failed to enlighten the date of their occupation, that too, from which date their adverse possession commenced. D.W.1 would admit that her father-in-law was occupying the property and she came to know about the possession upto 1957, only from him. It is the further evidence that she do not know, who is the owner of the property. D.W.2 would admit, categorically,

> "அரசாங்கம் எங்களுக்கு கொடுத்ததின்பேரில் நாங்கள் அங்கு இருக்கிறோம். தனிப்பட்ட முறையில் எனக்கு அந்த சொத்தின் மீது எந்த உரிமையும் இல்லை".

which means that they are living in the suit properties, only on the basis of the grant by the Government, meaning allotment, and he is not occupying the property, independently claiming any right. This evidence alone is

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sufficient, to negative the claim of adverse possession, since the oral evidence of other D.Ws. also failed to bring to surface the date of alleged adverse possession, to calculate the actual period.

37. The first defendant, as D.W.1, though would contend that she is living in the suit 'B' schedule property from the year 1957 or so, has not given any evidence whether they have asserted title in themselves or not. In fact, as seen from the cross-examination, she would admit that she has no right over the property, which reads in Tamil:

"தாவா சொத்தில் எந்தவிதமான எந்த உரிமையும் இல்லை"

the third defendant, as D.W.3, would state that she claimed title to the portion, which is in her occupation, only on the ground of grant of patta as well as on the payment of tax, which reads in Tamil:

"பட்டா கொடுத்து மனை வரி செலுத்தவதனால் எனக்கு சொந்த இடம் என்று சொல்கிறேன்"

thereby showing, she has also not claimed independent right over the property, by adverse possession. It is also said that this defendant had vacated the premises, though it is not recorded. The oral evidence of D.W.4, the sister of the third defendant, also fails to convince the theory of adverse possession.

38. The fourth defendant, by name K.Selvaraj, has been examined as D.W.5 and he claims that he is aged about 59. He would admit that the Slum Clearance Board, had allotted the portion to him, pursuant to the same, he was paying the amount also. He would admit further that except four persons, all other people living in the suit properties, have already vacated. The evidence, given by D.W.5 that he obtained approval plan on the basis of the allotment order, given by the Tamil nadu Slum Clearance Board, would indicate that he has not asserted title in himself, on any other ground, except claiming right to be in possession, under the allotment order. From the above evidence, it is crystal clear, whether the defendants are in occupation of the properties pursuant to the allotment order or assuming even prior to that, their possession was not at all adverse to anybody and they claimed the right to be in possession, and when that right was cancelled, they have no right to continue in possession of the same.

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39. The submission of the learned counsel for the defendants, that the Tamil Nadu Slum Clearance Board had only advanced money, by way of loan, for putting up the superstructure, whereas the lands are owned by the defendants, is fallacious, could be seen from the requisition made by the defendants for allotment of plots, in their favour. As adverted, pursuant to the requisition given by the defendants, plots were allotted and in the plots, for construction also, to improve the slums, as it was notified then, amount also should have been allotted. Therefore, it cannot be said, that retaining title by the defendants, over the properties, independently, they have borrowed loan or accepted the grant from the Slum Clearance Board or the Government, for the purpose of constructing the superstructure alone. Thus, we have to necessarily reject the plea of adverse possession, since the squatter on the property, for any number of years, cannot prescribe title to the suit properties, in the absence of intention or animus possidendi, which is the prime ingredient, to prescribe title or in other words, to extinguish the title of the true owner.

40. Admittedly, the properties were notified as 'slum area' and therefore, the plaintiffs or their predecessors-in-title, could not have initiated any action, after the notification, since there was a legal bar under Section 29 of the Tamil Nadu Slum Areas (Improvement and clearance) Act, 1972, from initiating eviction proceedings against the occupants. The legal hurdle was removed only under Ex.A.5- only on 16.05.1991- and thereafter, action was initiated, within the period of limitation. A faint attempt was made, as if the suit properties are notified 'slum area', and therefore, without sanction, under Section 89 of the Tamil Nadu Slum Areas Act, the suit filed is not maintainable. As pointed out supra, though originally the suit properties were notified as 'slum area', after denotification, (16.05.1991), they are no longer a 'slum area' and therefore, the sanction, to file the suit, is unnecessary. Thus, viewing the case from these angles also, it is not possible to confer title upon the defendants, by adverse possession or non-suit the plaintiffs. In the light of the above discussion, we conclude that the defendants have failed, to prove the claim of adverse possession, which should follow, consequentially, the plaintiffs are entitled to recover possession of the properties, as prayed for.

41. In the cross-objection, the contention, that the trial Court had no pecuniary jurisdiction to try the suit because of the value, pleaded in the plaint and the trial Court, without considering the same, properly,

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misconstruing Section 150 CPC, committed an error, appears to be not well founded, considering the scope of the suit as well as its valuation, separately for each schedule and the relief. The evidence given by P.W.1, that the suit properties are worth about Rs.65 lakhs, may not have any relevance, to oust the jurisdiction of the trial Court, in trying the suit. In this context, we have to see the description of the property and its valuation.

42. 'B' to 'E' schedules form part of 'A' schedule, a larger extent. The suit is not in respect of the recovery of 'A' schedule property, which may have its value, as spoken by P.W.1. 'B' schedule property is an extent of 500 sq.ft., 'C' schedule property is an extent of 300 sq.ft., 'D' schedule property is an extent of 300 sq.ft. and 'E' schedule property is an extent of 450 sq.ft., within the slated boundaries, as shown in the plaint plan also. The recovery of possession, as claimed under para 21(a) of the plaint is, only in respect of 'B', 'C', 'D' and 'E' schedule properties, after the removal of structures put up by the respective defendants. The memo of valuation would read, as if the house or the superstructures are valued and in our view, it must be a patent mistake, could be seen from the prayer itself. The first prayer reads:

> "(a) direct the Defendants to quit and deliver vacant possession of the premises mentioned in Schedule B, C, D & E and remove all structures put up by the Defendants and in default direct the plaintiffs to remove the structure and recover the cost from the Defendants."

Thus showing, the plaintiffs are not interested in the tiled house, huts or the building, as the case may be, which are available in the 'B' to 'E' schedule of properties. Ordinarily, the superstructures need not be valued and the vacant site alone should have been valued when the decree sought for is recovery of vacant possession. By reading the above prayer, coupled with the memo of valuation, we are of the considered opinion that the plaintiffs, instead of stating that the value of the site occupied, mistakenly would have slated the value of the tiled house etc. though it was not urged so and the same need not be taken so seriously, since the payment of court fee or collection of court fee is between the plaintiff and the Court, in which the defendants may not have any interest. In the year 1995, the suit was filed. Therefore, the value as Rs.40,000/=, Rs.12,000/=, Rs.12,000/= and Rs.67,500/= for the areas 500 sq.ft., 300 sq.ft., 300 sq.ft., and 450 sq.ft respectively, may be the

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correct value, representing the site, at the relevant period, though it may have more value at present. Originally, the suit was filed before this Court. This Court had also accepted the valuation. The defendants have not shown that the sites which are in their occupation are undervalued in the year 1995. As far as the mis-description of the suit properties is concerned, we find no force, since the properties could be identified very well having the plaint plan. In view of the above position, we would hold that there is no merit in the cross-objection and the trial Court had pecuniary jurisdiction to try the suit, since the same is valued properly for the purpose of court fee and jurisdiction.

43. The learned trial Judge, having come to the conclusion that the plaintiffs are the owners of the suit properties, the suit is properly laid, had erroneously come to the conclusion that the defendants have prescribed title by adverse possession as well as the suit is barred by limitation, which alone are liable to be set aside.

44. In the plaint, though the plaintiffs have claimed past and future mesne profits, we find no reason to award the same, since the possession of the defendants was pursuant to the allotment order issued by the Tamil Nadu Slum Clearance Board, where the defendants have also paid amounts towards instalments. Further the learned counsel for the plaintiffs also has not advanced any arguments, claiming mesne profits, either past or future. Hence, the claim, for mesne profits, is negatived.

45. In the light of the above discussion, we are of the firm and considered opinion that the plaintiffs', being the owners of the suit properties as established are entitled to recover the same from the respective defendants that the defendants have not prescribed title by adverse possession and that the suit is not barred by limitation, answering the points accordingly.

The result, therefore, is:

i) The appeal is allowed, in part, setting aside the judgment and decree dated 13.4.1998 rendered in O.S.No.14770 of 1996 by the VII Additional Judge, City Civil Court, Chennai, granting the following decree and judgment in favour of the plaintiffs:

a) The first defendant, by name Annakili, is directed to quit and deliver vacant possession of the 'B' schedule property; the defendants 5 to 7 (respondents 4 to 6

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in A.S.No.441 of 1998), who are the legal heirs of the deceased second defendant in the suit viz. Dhanalakshmi, are directed to quit and deliver vacant possession of 'C' schedule property; the third defendant, by name Mangalakshmi, is directed to quit and deliver vacant possession of the 'D' schedule property and the fourth defendant, by name K.Selvaraj, is directed to quit and deliver vacant possession of the 'E' schedule property,to the plaintiffs, within three months from today; that on failure, the plaintiffs are entitled to take delivery of vacant possession of the properties, through the process of Court as prayed for;

b) that the claim, for mesne profits, is negatived.

ii) The Cross-objection No.33 of 2000 is dismissed.

iii) Considering the facts of the case, the parties are directed to bear their respective costs, throughout.

Rao

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The VII Additional Judge,
City Civil Court,
Chennai.

2. The Registrar, City Civil Court,
Chennai 600 104.

3. The Record Keeper, VR Section,
High Court, Madras

+ 2 cc to Mr. R. Nadana Sabapathy, Advocate sr no. 3104, 3051
+ 1 cc to Mr. N.S. Sivam, Advocate sr no. 2990
+ 2 cc to Mr. AS Abdul Razak, Advocate sr no. 3019

GM(CO)
NM(28.02.2006)

Judgment in A.S.No.441/1998 and
Cross-Objection No.33/2000

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